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Director's Office
Office of Patent Publication

**WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS
ONE LIBERTY PLACE 46TH
PHILADELPHIA PA 19103**

In re Application of :
Atul M. Mehta, et al. : **DECISION ON PETITION**
Application No. 09/038,470 :
Filed: March 11, 1998 :
Attorney Docket No. CELG-0085 :

This is a decision on the Petition For Withdrawal Of Abandonment received in the Patent and Trademark Office (PTO) on March 13, 2001 in the above-identified application. The application file was received in the deciding officials office—Office of Patent Publication—on April 16, 2002 from Technology Center 1615.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawal of Holding of Abandonment."

Applicant petitions that the abandonment set forth in the notice mailed by the Office on January 4, 2001 be withdrawn. Petitioner has provided a copy of the complete response (Request for CPA) and a postcard, which acknowledges receipt of the CPA, Information Disclosure Statement, and the USPTO Form 1449 on May 15, 2000, as evidenced by the Office Date Stamp thereon.

A review of the file reveals that the Continued Prosecution Application (CPA) under 37 CFR 1.53(d), and the Information Disclosure Statement are present in the application file. The filing of the CPA is a request to expressly abandon the application. The CPA was processed and, as a result thereof, the Office acknowledged the Express Abandonment of the prior application. The Notice of Allowance mailed February 15, 2000 was withdrawn, however, the application was newly allowed on August 15, 2000.

The application was held abandoned for failure to timely pay the issue fee as required in the new Notice of Allowance and Issue Fee Due, mailed August 15, 2000. The Notice set a three (3) month statutory period for reply.

Since, the Office has no record of a response to the Notice, the abandonment cannot be withdrawn at this time.

Although this petition for withdrawal of the holding of abandonment is being dismissed, further petition remedies are available for bringing about the withdrawal of the holding of abandonment.

The petitioner should consider petitioning the Commissioner as follows:

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:
 - (1) The reply required to the outstanding Office action or notice, unless previously filed;
 - (2) The petition fee set forth in § 1.17(l);
 - (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable;
and
 - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

or

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:
 - (1) The reply required to the outstanding Office action or notice, unless previously filed;
 - (2) Accompanied by the petition fee as set forth in § 1.17(m);
 - (3) A statement that the entire delay in filing the required from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
 - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: 703-308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Rm. 3C23
2201 South Park Place
Arlington, VA

Telephone inquiries relating to this matter may be directed to the Office of Petitions at 703-305-9282.



Thomas E. Hawkins
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Office of the Director
Office of Patent Publication